

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

JOHN T. ELDER,

Petitioner

v.

//

CIVIL ACTION NO. 1:05CV100
CRIMINAL NO. 1:04CR10-1
(Judge Keeley)

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On June 30, 2005, pro se petitioner, John T. Elder, filed a petition pursuant to 28 U.S.C. § 2255. The Court referred this matter to United States Magistrate Judge John S. Kaul for initial screening and a report and recommendation in accordance with Local Rule of Prisoner Litigation 83.09.

On August 29, 2007, Magistrate Judge Kaul issued an Opinion and Report and Recommendation recommending that Elder's Motion Under § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody be denied with prejudice, and the case be dismissed. The Magistrate Judge recommended denying Elder's motion on the grounds that the petitioner failed to meet his burden under § 2255 of showing that his plea was not knowingly, voluntarily, and freely given. The Magistrate Judge determined that the plea transcript show that the petition "was coherent, that he answered all questions asked of him in an informed and intelligent manner, and that he demonstrated an understanding of the nature of the charges against him and the consequences of pleading guilty."

ORDER ADOPTING OPINION/REPORT AND RECOMMENDATION

Furthermore, the Magistrate Judge determined that petitioner's counsel was not ineffective due to failing to ask Elder whether he wished to file an appeal, given that Elder waived his right to appeal in his plea agreement.

The Report and Recommendation also specifically warned that failure to object to the recommendation would result in the waiver of any appellate rights on this issue. No objections were filed.¹

Therefore, the Court **ADOPTS** the Report and Recommendation in its entirety. Accordingly, the Court **DENIES** the Motion Under § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Docket No. 45 in 1:04CR10-1 and Docket No. 6 in 1:05CV100) and **ORDERS** Elder's case **DISMISSED WITH PREJUDICE** and stricken from the Court's docket.

The Clerk is directed to mail a copy of this Order to the pro se petitioner, certified mail, return receipt requested and to counsel of record.

Dated: September 18, 2007

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE

¹ The failure to object to the Report and Recommendation not only waives the appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).